

En Banc

October 2001

Newsletter of the Superior Court Law Library

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Law Library News

□ Library Space

Pick up just about any legal newspaper today and you're likely to read an article about courts and their lack of space. Our court could have easily been featured in any one of those articles.

This space crunch has caused the Law Library Information Desk to move its physical location from the first floor to the second floor and to merge its services with the Reference Desk. As a result of this combination, a new online room has been constructed in between the Reference and Arizona collections on the second floor. The periodical collection, which was housed on the third floor, has been moved to the Central Court Building and is only accessible by library staff at this time. All but the most current, unbound issues of law reviews and journals are housed there. You can find the most recent issues of our legal periodical collection in the southeast corner of the second floor. To make your trip quick and efficient, please call ahead to our *Retrieve and Hold Service* and we'll have the book waiting when you get here.

Despite the book moves and relocation of staff, library services have not changed. We would ask that you update your records to reflect the Library's main phone number as (602) 506-3461. You may still call (602) 506-3945 for *Document Delivery Services*, *Interlibrary Loan Services*, *Retrieve and Hold Services* and any questions related to circulation which includes book renewals and overdue fines.

□ Domestic Violence Necessities Drive

Thanks to all of those who contributed to the Young Lawyers Division of the Maricopa County Bar Association's **10th Annual Domestic Violence Necessities Drive**. The goal was to obtain money and items necessary to meet the immediate needs of women and children who live in domestic violence shelters. The Library has been a drop-off location for five years and will continue to support the Young Lawyer's efforts to assist those in need. Thanks again!

□ Library Staff

Rosalyn Robinson, our LAN Administrator, graduated from Alabama State University in 1999 with a B.S. in Computer Information Systems. Before moving to Arizona, she worked as a technical support specialist and a computer operator. Rosalyn and her husband (who is in the military) have one daughter. She is currently working on a masters degree at Keller Graduate School of Management.

Linda Malcolm recently joined the staff as a Law Library Assistant. Born and raised in Scotland, she relocated to Phoenix seven years ago. She graduated from Glasgow University with a degree in Library Science and is currently completing a degree in Legal Studies at Phoenix College. Her interests include hiking, snow skiing, and spending what little spare time is left over with her daughters and friends.

Linda Kraus, a new Reference Librarian, joined the staff this summer. She previously worked as a librarian at the Fisher Library, a business and resource center, which served the part-time MBA/Executive program's students and alumni at the University of Chicago's Gleacher

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Center. She was the coordinator of reference services at the North Chicago Public Library from 1997-2001 as well as interim director of a library in Chicago last year. Scholarly work related to legal research included such courses as Women and the Law, Labor Relations, Business Law and Arbitration. Linda received an AA in Liberal Studies from Kendall College in 1991; a BA in Applied Social Sciences in 1993; and an MLIS from Dominican University (Rosary College) in 1997.

Liz Fairman is our new Technical Services Librarian. She has a Master's Degree in Library and Information Studies from the University of South Florida and has worked in a range of library settings, including public schools, Bayouland Library System, a public library network in Louisiana, and a family planning library at Pathfinder International in Massachusetts. Between graduating from Purdue University and attending graduate school, she worked in the Technical Services Unit of the Purdue library. For the last 15 years, she has served as Media Specialist and Technology Resource Specialist for the Hillsborough County, FL, School District. As a transplant from Florida, she doesn't find our heat all that uncomfortable.

Continuing Legal Education

Maricopa County Bar Association is now offering online Continuing Legal Education courses for attorneys and their staff through **West Legal Edcenter**. West Legal Edcenter is an integral part of the growing family of Web-based services for the legal profession from West Group.

Live Webcasts as well as archived program offerings are available. Once you complete the brief registration by clicking the Register button, you can receive e-mails about upcoming programs that correspond to your practice area or jurisdiction. Registrants can log in

to see personalized listings of courses purchased and taken, and may verify times and dates by selecting Current Enrollments from the My CLE screen. A reminder e-mail will be sent one business day in advance of all live web casts for which you are enrolled. This service will help MCBA's 4,300 members achieve their CLE requirements from any location, on their own time. The location of this site is <http://westlegaledcenter.com>.

Superior Court Update

On Monday, October 1, the Superior Court of Arizona in Maricopa County, in cooperation with the Clerk of Superior Court, the Governor's Division for the Prevention of Family Violence, and the Arizona Coalition Against Domestic Violence, opened the **Family Violence Prevention Center**. This new facility provides a dedicated location in the downtown Phoenix Superior Court complex where people can get the necessary paperwork to pursue a court order related to domestic violence, plus get specific information on community services available. Adjacent to the Court's Self-Service Center on the ground floor of the East Court Building (101 W. Jefferson), the 570 square foot Family Violence Prevention Center has a reception area where people can talk to court staff, a children's area with a table, chairs and toys, and two offices for future use by domestic violence advocates. The Court continues to work on collaborating with the domestic violence advocacy community to provide lay advocates in the Center in the future who can provide assistance beyond that which can be provided by court staff. It is open 8am until 5pm, Monday through Friday, and no appointment is necessary.

Did You Know?

The following was taken from *A Compendium of Odd Laws*, by Susan Savoca Twarog.

1. Every public school teacher shall teach pupils honesty, kindness, justice and moral courage for the purpose of lessening crime and raising the standard of good citizenship. *Illinois Revised Statutes* §27-12 (1983).

2. If an object of litter is discovered, on another's property without his permission, on any public highway, street or road, upon public parks or recreation areas, or upon any other public property except that property designated for that use, bearing a person's name, it shall be prima facie evidence that the person whose name appears on the object, threw, dumped, deposited or caused to be thrown, dumped or deposited there. *Tennessee Code Annotated* §39-3-1005 (1982).

3. Every person who shall maliciously or mischievously enter the enclosure, or go upon the premises of another in the night time, and knock off, pick, destroy, or carry away any melons of any tree, shrub, bush, or vine, shall on conviction thereof, be punished by fine not exceeding One Hundred Dollars (\$100.00) and not less than Ten Dollars (\$10.00), or by imprisonment in the county jail not exceeding thirty (30) days. *Oklahoma Statutes* §21-1772 (1981).

4. Grapefruit shall be free from serious sheepnose. *Arizona Revised Statutes Annotated* §3-450(1974).

5. A person is guilty of substitution of children when, having been temporarily entrusted with a child less than one year of age and intending to deceive a parent, guardian or other lawful custodian of such child, he substitutes, produces or returns to such parent, guardian, or custodian a child other than the one entrusted. *Connecticut General Statutes Annotated* §53a-99 (1972).

Electronic Resources

☐ Horizon

The next time you use the Law Library Catalog, check the box

labeled **Advanced Features** to expand your ability to search our collection. You can restrict your search by library branch; search more than one index at a time; look up your account; and renew books from the search screen.

Advanced Searching: The Multi Index button brings up a search screen allowing you to create an advanced search of keywords found in different areas of the catalog. You can select author, title, subject, general keyword or other lists, and limit the search using connecting terms. To find titles and subject headings that contain the word "privacy," for example, select Title Keyword list and the Subject Keyword list, and type "privacy" in each search box. Click "AND" to connect the terms. If you want to narrow your search to exclude books about medical records, click "NOT," select the General Keyword list, and enter "medical." Click search to see the results.

Volume Search: To find out if the library has a specific volume of a series, search for the title, then click Show Detail. Next, click on File on the menu bar and choose Vol. Search. You can search by volume number or by year.

Account Information: Click on Borrower Info and enter your library barcode number to check your record. You will be able to see what you have checked out, find out about overdue or fines, and renew books from that screen.

These features are available only on computers in the library, but watch for advanced searching, borrower information and other upgrades on WebPAC, our web site version.

❑ Network Resources

Hein-on-Line, "a comprehensive, ever-expanding, image based collection of legal research material," is one of the Library's newest databases. *Hein-on-Line*

began this project in 1998 by offering access to selected articles from the twenty-five most prominent legal journals.

The William S. Hein Company is the largest distributor in the world of legal periodicals and has long been involved in the preservation of retrospective legal books and journals. Working with librarians, Hein took on the challenge to put their 40 years of experience to use by converting these retrospective legal journals into an electronic format that was both user friendly and affordable.

Hein's database allows for users to either search or browse. All journals are "tagged" in *Bluebook* citation format so finding a cited article is easily accomplished. The database also lets the user print or download any retrieved document. Cornell Law Review was the first title to be entered in its entirety. The goal of Hein is to make all journals available in their original print format.

❑ Internet Site Reviews

Arizona Department of Public Safety Sex Offender InfoCenter
www.azsexoffender.org

In early July, the Department of Public Safety added another feature to its already popular web page (the site reportedly receives 25,000 hits a month).

Previously, the site enabled users to track sex offenders by zip code or name. The enhanced feature now allows the public to enter an address to see where offenders live in relation to that specific address. The search results also show which schools and day care centers are in the area.

DPS updates this page daily with information about 12,000 registered sex offenders in the state. It is important to note that the information includes those offenders released after January 1, 1996.

Top Law Schools
[http://www.usnews.com/usnews/edu/b](http://www.usnews.com/usnews/edu/beyond/gradrank/gdlawnf.htm)

[eyond/gradrank/gdlawnf.htm](http://www.usnews.com/usnews/edu/beyond/gradrank/gdlawnf.htm)

If you're thinking of law school or maybe you're just curious to see how the school you attended ranks with others, then check out for a complete listing of the top law schools in the nation.

❑ Publications of Interest on the Internet

Youth in the Criminal Justice System Guidelines for Policymakers and Practitioners (2001)

<http://www.abanet.org/crimjust/pubs/reports/pdf.htm>

In a 1999 report on juvenile offenders, it was estimated that a minimum of 200,000 children are tried as adults annually. Calling this trend a "transformation of national practice," a Task Force was assembled in 1998 to study and make recommendations on how to handle such cases.

The Task Force submitted this White Paper to give guidance to attorneys, judicial officers, probation officers, and correctional officers on how to deal both "effectively and efficiently" with this change and the challenges it brings to all those involved. The report does not address the issue whether juveniles should be tried as adults. Instead, the Task Force's duty was to provide recommendations on how juveniles should be treated "from the moment" they enter the criminal justice system as an adult.

The report contains three separate sections beginning with the Pretrial Stage. The Trial Stage follows and concludes with the Correctional Stage. Each section or "Stage" makes specific recommendations and appears to have thoroughly considered all aspects of each identified issue. For example, in the Pretrial Release section of the first Stage, the Task Force pointed out that "consideration should be given to getting the youth safely home if the parent or custodian is not present at the appearance." This followed the recommendation that release always be the foremost consideration in

these types of cases and further states that “youth should never be detained simply because there is no other place for them...”

The Trial Stage begins by reminding the reader about the “common law infancy defense” and how it should be applied to all juveniles under the age of fourteen. This second stage also contains recommendations on how judges and court staff should treat offenders and emphasizes the importance of ongoing training programs that are accessible “throughout the country.”

The Task Force writes, in the final stage, that the “goal for all correctional systems that hold persons under eighteen years of age” should be to hold these youthful offenders separately from the adult population. Here the Task Force also discusses architectural considerations and outlines discipline and grievance procedures, and expresses its hope that the report and recommendations will provide “helpful guidance” in providing protection to offenders while holding them accountable for the crimes they have committed.

Report on Privacy and Public Access to Electronic Case Files
www.uscourts.gov/Press_Releases/att81501.pdf

This report on privacy on public access to federal court records was adopted by the Committee on Court Administration and Case Management of the Judicial Conference of the United States. The report stems from studies and a draft report by the Committee's Subcommittee on Privacy and Public Access to Electronic Case Files, formed in 1999. Its focus was to find solutions and policies that would uniformly govern both privacy and public access to case files in federal courts. The Subcommittee's studies, meetings, and interviews with court users and personnel culminated in draft policies and a request for comments, posted at

www.privacy.uscourts.gov, followed by a public hearing in March 2001 and its final report to the full Committee in June 2001.

Privacy and public access to electronic case files have been a concern to the Judicial Conference Committee for several years. Issues surrounding electronic public access of court records are complicated and have been a topic that Congress has also addressed. The report notes that Federal court case files are presumed to be available for public inspection and copying, unless sealed or subjected to restricted access by statute or court rule or policy. On the other hand, the right to public access is not absolute, and courts must balance both access and privacy interests. The Subcommittee also notes that while the federal courts are not required to provide electronic access, and did not intend its recommendations do create an entitlement to electronic access, the public should receive the benefits of technology, including more efficient access.

The report recognizes that different case types require different recommendations, as far as how they're stored, retrieved, and disclosed to the public. Certain types of civil case files, such as social security and bankruptcy, are considered to include sensitive and personal content. The report recommends “liberal remote electronic access” - that is, “to the same extent that they are available at the courthouse” - with the exceptions that Social Security cases should be excluded and that certain “personal data identifiers” such Social Security numbers, birth dates, financial account numbers, and names of minor children should be modified or partially redacted. Access to bankruptcy files would be afforded under similar restrictions.

The improper use of criminal case files also had to be addressed in the report, and the Subcommittee took into consideration how these records could be misused if digitized for public

use. The report recommends that electronic access to criminal cases not be available at this time, but that such a policy be reexamined within two years of adoption by the Judicial Conference. The Committee decided that the benefits of electronic access to criminal files were outweighed by safety and law enforcement risks: access to criminal case files would allow defendants and others access to information that could be used to intimidate and possibly harm both victims and defendants as well as their families, and would increase the risk of unauthorized access to preindictment information.

Some of the alternative considerations considered are also stated in the report. Defining which documents should be included in the public file was rejected as requiring restrictions on access to paper files at the courthouse to information that have traditionally been available, decreasing overall access. Creating levels of user access to electronic documents was considered and debated, but ultimately rejected as too complicated for the privacy benefits yielded. Amendment to the Federal Rules of Civil Procedure, particularly Rule 11, were also rejected as too cumbersome. Finally, the Committee recognized that technology and the experiences of individual courts are constantly changing, requiring frequent re-examination and revision of the report's recommendations.

In the Courts

□ Recent Arizona Cases

***State v. Olcavage*, 1 CA-SA 01-0130 (August 30, 2001)**

In a Petition for Special Action from the Scottsdale City Court, the Arizona Court of Appeals has unanimously ruled that a “qualified person” under A.R.S. §28-1388(A), does include phlebotomists.

Eight defendants, each of whom had been arrested and charged with driving under the influence, moved to

have their blood test results suppressed. The parties stipulated that the personnel who drew their blood did so in "a manner acceptable in the field of phlebotomy;" that the phlebotomists had completed training and were certified, and had drawn blood thousands of times. Nonetheless, they argued, a phlebotomist is not a "qualified" person under the statute.

The city court judge agreed and said since the phlebotomists did not work under the direction of a doctor, the results were "legally inadmissible." The judge relied on both A.R.S. §32-1456 and §32-1401 and concluded that the "when the Legislature talks about a 'qualified person' they [sic] are referring to an individual who is directly supervised by a doctor, physician's assistant or registered nurse." A.R.S. §32-1401 specifically says "[P]ractice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the holding of oneself out as being able to diagnose, treat or correct any and all human diseases...."

The State began its argument by pointing out that "qualified person" is not defined in Title 28. The statutes relied upon in Title 32 do not apply since they specifically discuss the "diagnosis, treatment or correction" of a human disease. The appellate court agreed and ruled that drawing blood for purposes of determining a violation of the DUI laws, does not include any "diagnosis, treatment or correction."

In its opinion, the court stated that "qualified" was commonly defined as "competent" and concluded that "the evidence unquestionably established that the phlebotomists were, by reason of training and experience, competent to draw blood."

Haralson v. Fisher, CV-00-0006-CQ (September 13, 2001)

In a 3-2 decision, the Arizona Supreme Court decided that a claim for punitive damages can survive the death of a tortfeasor and be levied against his or her estate. This sets aside over thirty years of case law in our state.

On December 10, 1996, Fisher, president and chief executive officer of Fisher Surveying, Inc., while in the course and scope of his employment, was driving south on Highway 191 in Graham County. He was observed driving erratically by other motorists prior to colliding with a truck in which Haralson was a passenger. Fisher was killed in the accident and Haralson was injured. Fisher's body tested positive for the presence of amphetamines, benzodiazepine, and marijuana. An ensuing lawsuit by Haralson sought to recover compensatory and punitive damages against the estate of Fisher and for corporate vicarious liability.

In reaching its decision, the Arizona Supreme Court considered the argument that punitive damages against a deceased's heirs only serves to punish innocent parties. This was countered by Justice Thomas A. Zlaket who stated, "[T]he rule we embrace sends a forceful message that a person's assets may not be insulated by the happenstance of death. Although ordinarily earmarked for the decedent's heirs, such assets may be required to satisfy both compensatory and punitive damage awards flowing from his or her wrongdoing. We see nothing unjust in this principle."

□ From Other Jurisdictions

Duran v. Carris, CIV-98-1508-JP (10th Circ., January 2001)

In a case involving an easement and boundary dispute, as well as RICO allegations, the 10th Circuit of Appeals ruled that an attorney must acknowledge, by signature, "any ghostwriting of an otherwise pro se brief."

In an order to show cause hearing for

sanctions against the plaintiff and the ghostwriting attorney, Harry Snow, the Court expressed concern for "litigation with an unseen hand." The Court determined that Mr. Snow had, in fact, provided "substantial" assistance to Duran.

Citing *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), the circuit court wrote that providing assistance without entering an appearance, "not only affords Mr. Duran the benefit of this court's liberal construction of pro se pleadings," but also "inappropriately shields Mr. Snow from responsibility and accountability."

The court agreed that as of yet, it had not defined when legal advice given by an attorney was "substantial" but in this particular case, it was clear that the drafting of the appellate brief fit the definition. Mr. Snow was admonished and warned that further violations would result in sanctions.

State of Wisconsin v. Oakley, 99-3328-CR (Ct. App. 2000)

David W. Oakley, is the father of nine children by four women. The children are ages 16, 13 (2), 12 (2), 11, five, four, and three years of age.

Originally, he was charged with nine counts of failure to pay child support but that was reduced to three counts because of a plea agreement. Oakley has a repeat offender status that stems from intimidating two witnesses in a child abuse case (one of the victims was his own child). Oakley is a chronic "deadbeat dad" who has refused to pay any child support.

On January 13, 1999, a plea bargain was accepted by the Circuit Court and Oakley was sentenced to three years in prison on the first count and a prison term of eight years on the two other counts. Additionally, the judge gave Oakley five year's probation to be served after the prison time. As a condition of probation, Oakley was ordered not to father any more children until he could demonstrate that he could consistently support his present children. This sentence follows state law that requires that probation conditions rehabilitate the

offender and/or protect the interest of the community.

Oakley argued that the condition that he father no more children was unduly harsh and that it is his basic fundamental or constitutional right to become a parent. The judge explained that Oakley had no physical or mental disability that would prevent him from finding employment. He also noted that it would always be a struggle to support so many children, but that the public had a right to expect that he at least try.

The Court of Appeals affirmed the trial court by a vote of 4-3. The decision was written by the court's four male justices and the three female justices were in dissent. The court noted that Oakley's crime is totally related to his fathering of children that he is not willing to support. They also stated that a condition of probation can impinge upon constitutional rights as long as the condition is not overly broad and is related to the defendant's rehabilitation.

Tennessee v. Hicks, 55 S.W. 3d 515 (2001)

The Supreme court of Tennessee reversed the judgement of the Court of Criminal Appeals and dismissed the indictment for possession of marijuana with intent to sell or deliver against the appellant Larry Allen Hicks.

The principle issue in this case addresses Article 1, section 7 of the Tennessee Constitution regarding the reasonableness of drivers' license roadblocks. The appellant was stopped at such a roadblock when officers discovered five pounds of marijuana in the passenger seat of his car. The appellant moved to suppress the evidence against him citing intrusion into his reasonable expectation of privacy. He also contended that the roadblock did not conform to the court's decision in State v. Downey which

addressed the issue of sobriety checkpoints. The court acknowledged that the Downey case, "[D]id not address the constitutional propriety of roadblocks for purposes other than to detect motorists driving under the influence of alcohol."

While there is little doubt about the positive impact of sobriety checkpoints on public safety, the threat from unlicensed drivers does not necessitate the required interference with an individual's privacy. The Supreme Court of Tennessee measured productiveness against unreasonable interference with liberty and privacy, and concluded that, "[T]he drivers' license roadblock in this case violates the protections against unreasonable seizures found in Article 1, section 7 of the Tennessee Constitution and the decision of the trial court to suppress all evidence derived from the roadblock is affirmed."

New in the Library

□ Book Reviews

Schneier, Bruce. *Secrets & Lies: Digital Security in a Networked World*. Wiley Computer Publishing QA76.9.A25 S352 2000

Hackers. Virus attacks. Stolen Identities. Denial-of-service attacks. We've all heard the stories. So many of us have electronic gadgets nowadays that it's hard not to spend at least some time thinking about security issues. And if you haven't given it much thought (shame on you, by the way!), then you will - if you continue to read this little ditty!! So keep reading.

The first thing that Mr. Schneier will tell you is - read this book in order from beginning to end (you think I'm kidding - read page xiii in the preface!). The second thing he will tell you is that not only does he want you to read the book once, but he

really wants you to read it TWICE! I don't know about you, but reading a book about digital security is about the equivalent of going to the dentist for a root canal. No, I'm serious. Only a true computer geek would even think about reading a book like this twice, let alone once. But in this case, it just might be worth it. *Secrets & Lies* is actually a fun book to read and yet, at the same time, it's providing valuable information that you really should know about in this computer age (Really! You should!). Threats to your information are everywhere. Do you have a modem attached to your computer? Most of us do. How else would you get on the Internet? Do you keep your financial information on your computer - you know, do you use Quickbooks or some other program to keep track of your financial information? How many times has someone scanned your computer for information? Bet you don't know the answer to that one, do you? I know for a fact that at least 3 different "people" have attempted to scan my home network (if you would like to know the details, ask my husband). It's scary. But Mr. Schneier's book breaks down the mumbo-jumbo and provides an easy-to-understand, practical approach to the situation. Yes, there are a lot of computer-related terms, but don't let that scare you. Read the book. It's pretty interesting. In a geeky-computer kind of way!

□ Article Reviews

Nelson, Sharon D. and John W. Simek. "The State of Paperless Courts." 11 *Law Office Computing* 89 (August/September 2001).

Slowly the courts are inching toward electronic filing, and e-filing should one day be universal for all courts, federal and state.

E-filing involves a document generated from a word processor or scanner, which is transferred to the court usually via the Internet. Each court defines the format considered acceptable. XML, or Extensible Markup Language, is a kind of

tagging system that is infinitely extendable because, unlike HTML, it is not limited to a set number of tags. XML is used by several states. A notable commonality, however, is that a vast majority of state courts have chosen to use Adobe's Portable Document Format (PDF) which is also in keeping with the federal court's adoption of the same standard.

States considering or using e-filing fall into the following categories: 1) those admitting that e-filing is coming but do not have a plan to implement yet; 2) states that have dabbled a little by starting a pilot project and are cautiously expanding; and 3) the true believers who are moving forward as fast as they can. About half of the states are currently engaged in some type of electronic filing. In order for e-filing to be significantly cost effective, it should be implemented as part of a case management system. Colorado is a good example - there is one case management system.

Control over and public access to court records is a sticky issue, and courts are very particular about who has control of this information. Repackaging and selling court information is a development that may bring alternate uses when data is accessed by banks, realtors, credit card companies, etc. Some courts have no problem with third-party vendors, whereas others have great concerns about preserving both the data and the privacy of the persons involved, and the unforeseen uses of the data when it becomes public information.

Some states restrict records based on the subject matter, while others restrict access to lawyers, parties, and court personnel. There are side effects to public access, such as increased workload and handling redactions. Attorneys may decline to use e-filing without client consent.

There are other problems with implementing an e-filing system.

Some court administrators have openly admitted that "lawyers are extremely hard to train," and that also can apply to judges as well. They are both traditionally resistant to change. Some judges and lawyers say that e-filing systems are slower than the traditional paper system, and others don't like mixing paper filing and electronic filing.

Courts are making great strides toward e-filing. The most noteworthy include Colorado, Virginia, Georgia, District of Columbia, Maryland, and Florida. Colorado was the first state in the U.S. to undertake statewide e-filing, going online in July 2000. Virginia began with civil cases in March 2001 and left the data under the sole control and management of the court, with access restricted to attorneys of record. Georgia's new e-filing project is the first of its kind to use an interoperability pilot involving four counties and four vendors. The District of Columbia went online on May 1, 2001, backed by great judicial enthusiasm and announced as a system that would "change the face of litigation in Superior Court." The D.C. system was developed without any cost to the courts. Maryland's pilot began in June 2001. It has only handled asbestos cases and is not mandatory, permitting both paper and e-filings. Florida adopted e-filing rules five years ago that are only now becoming a reality.

There is surprising growth in home grown e-filing systems in states such as New Jersey, New Mexico, Florida, Kansas, West Virginia, and Mississippi. In house development is slower, mainly because the programming tends to take longer.

Scott, John E. S. and Joseph P. Tocco. "Preparation, Preparation, and More Preparation: The Key to Any Successful Mediation." 43 *For the Defense* 37 (July 2001).

This article's guidelines are based on the themes that mediation is "facilitated negotiation," and that parties agree to mediation because they are both willing to settle their

case. Mediation differs from litigation, which is decided by a third party with no control by the individuals over the outcome. Mediation is the creative forming of a resolution that respects the interests of both parties, results in a quick decision, and is less expensive.

Mediators are divided into three basic categories: facilitative, evaluative, and transformative. Facilitative mediators "do not offer opinions," they guide the participants to come to their mutual decisions. Evaluative mediators "offer opinions" on the likely outcome of the mediation. Transformative mediators allow parties "to structure both the process and the outcome" of the mediation. It is very important that all parties be comfortable with the mediator's experience, training, and knowledge of the issues. A decision must be made from the beginning if the mediator is going to be an "expert in a particular field" or someone who is unfamiliar with the subject matter.

Preparation of the client is one of the most important starting points. The client may be reluctant to agree to mediation, but this may often be due to ignorance of the process and the goals of mediation. Sometimes, clients have had bad experiences with prior mediations, or they may view it as a sign of weakness. Explaining that the parties themselves control the outcome of mediation helps to eliminate the uncertainties that some may have. Direct client involvement is advocated by many mediation participants. This results in clear and effective communication among all parties. At times, clients will use these sessions as an opportunity to "vent," and clients must be prepared in advance to expect this.

One barrier to successful mediation is lack of information. Confidential information may be withheld because of concern over who will be viewing these documents. Parties must trust that all conversations with the mediator are confidential.

It is also important to develop and explain a negotiation strategy. A negotiation strategy depends on the

facts of the case, the mediator, and opposing counsel. A "competitive" strategy is somewhat like litigation, whereas a "cooperative" strategy focuses on identifying the interests at stake for both sides. When explaining negotiation strategy, a client may be reminded that mediation is about "persuading the other party" and litigation is about "persuading the judge, jury, or arbitrator."

Preparing a short, well written opening statement is important as well, because it gives the mediator a clear assessment of each side of the disagreement. Care should be taken to avoid preparing a statement that hardens the opposition and puts them in an adversarial position.

A "mediation notebook" is helpful to keep key documents and exhibits in an organized and accessible collection that can be consulted to answer any question that may arise from the mediator.

Finally, the parties should walk away from the mediation with a well drafted, clear, and final settlement agreement. It is very important not to leave with any questions or problems left unresolved and sitting on the table.

Mediation offers important benefits of low cost, efficiency, and conciliation, but clients must be persuaded of these benefits in order to have a successful outcome.

□ Recently Received Books

Advanced Post-Mortem Planning and Probate in Arizona
National Business Institute
KFA2544.A75 A38 1999

Advanced Real Estate Law in Arizona
National Business Institute
KFA2512.A75 A3 1999

Advanced Workers' Compensation in Arizona
National Business Institute
KFA2939.W6 A39 1999

ALI-ABA's Practice Checklist Manual for Drafting Leases III
ALI-ABA
KF593.C6 A94 2001

Andrews, Lori B.
Future Perfect: Confronting Decisions About Genetics
Columbia University Press
RB155.65 .A53 2001

Barnes, Alison
Health Care Law: Desk Reference
ALI-ABA
KF3821 .H43 2001

Berends, Mark
Implementation and Performance in New American Schools
Rand
LB2822.82 .I44 2000

Bluff, Gary W.
Advanced Construction Law in Arizona
National Business Institute
KFA2675 .B57 1999

Casson, Lionel
Libraries in the Ancient World
Yale University Press
Z732 .C37 2001

China, the United States, and the Global Economy
Rand
HC427.92 .C46 2001

Copyright Law for the Digital Age in Arizona
National Business Institute
Ariz. KF2996.A2 C67 2000

Domain Names: Global Practice and Procedure
Sweet & Maxwell
TK5105.875.I57 D44

Drug Courts: A Research Agenda
National Drug Court Institute
Court Admin. KF3890 .T385 1999

Drug Use in Metropolitan America
Sage Publications
HV5825 .D777 1999

DUI/Drug Courts: Defining a National Strategy
National Drug Court Institute
Court Admin. KF3890 .T386 1999

Dyer, Frank J.
Psychological Consultation in Parental Rights Cases
Guiford Press
KF8965 .D94 1999

Eades, Ronald W.
Jury Instructions in Automobile Actions

4th Ed.
Matthew Bender
KF8984.T7 E34

The Early Drug Courts: Case Studies in Judicial Innovation
Sage Publications
CT ADMIN, 3rd Floor KF3890 .E17 1999

Family Law News
Family Law Section of the State Bar of Arizona
KFA2504.A15 F36

Fishman, Stephen
The Public Domain: How to Find & Use Copyright-Free Writings, Music, Art & More
Nolo Press
PLAZA KF3022.Z9 F57 2000

Florida Standard Jury Instructions in Civil Cases
Florida Bar-Lexis Publishing
KFF542.A65 F55

Hackstaff, Karla B.
Marriage in a Culture of Divorce
Temple University Press
HQ536 .H27 1999

Hamilton, Laura S.
Using Web-based Testing for Large-scale Assessment
Rand Education
LB3060.3 .H35 2000

Health Law in Arizona: The Legal Implications of Health Care Delivery Systems and Managed Care
National Business Institute
Ariz. KF1183.A75 H43 1999

Hosmer, Stephen T.
The Conflict over Kosovo: Why Milosevic Decided to Settle When He Did
Rand
DR2087 .H67 2001

Insurance Coverage Law in Arizona
National Business Institute
KFA2585.A75 I67 1999

Internet Basics for the Arizona Attorney
National Business Institute
Ariz. KF320.A9 I68 1999

The Institute (newsletter)
National Drug Court Institute
Court Admin. KF3890 .I5

Judicial Division Record
ABA
KF276.A15 J8

Juvenile Clarion: the Newsletter of Arizona Association of Counsel for Children, Inc. & Juvenile Law Section, State Bar of

Arizona

Arizona Association of Counsel for
Children and Juvenile Law Section,
State Bar of Arizona,
KFA2504.A15 J88

Keilitz, Susan

*Specialization of Domestic Violence
Case Management in the Courts: A
National Survey*
NCSC
KF8732 .K45 2000

Kess, Sidney.

*Kess on the 2001 Tax Legislation:
Insights and Strategies: a CPE Course*
CCH Inc
KF6289.3 .K464 2001

Libicki, Martin

*Who Runs What in the Global
Information Grid: Ways to Share Local
and Global Responsibility*
Rand
UA943 .L53 2000

Major Land Use Laws in Arizona

National Business Institute
KFA2858.A75 M35 1999

Matthews, Joseph

*The Lawsuit Survival Guide: A Client's
Companion to Litigation*
Nolo Press
PLAZA KF8863 .M28 2001

McCarthy, Kevin F.

*A New Framework for Building
Participation in the Arts*
Rand
NX230 .M37 2001

McClory, Toni

Understanding the Arizona Constitution
U of A Press
KFA2802 .M33 2001

Mechanics' Lien Law and Strategies in Arizona

National Business Institute
KFA2555.5.A75 C76 1999

Morrison, Peter A.

*A Demographic Perspective on Our
Nation's Future*
Rand
HA214 .M67 2001

Murphy, Patrick

Improving Anti-Drug Budgeting
Rand
HV5825 .I53 2000

Nolo's Guide to Social Security

*Disability: Getting & Keeping your
Benefits*
Nolo Press

PLAZA HD7105.25.U6 M675 2001

Organizing Corporations in CA, 3rd ed.

CEB
KFC345 .O73

Ostrov, Jerome

Tax Planning with Real Estate
PLI
KF6540.Z9 O88

Pakroo, Peri

The Small Business Start-Up Kit
Nolo Press
PLAZA HD62.7 .P35 2000

PDR Companion Guide 55th ed.

Medical Economics Co.
REF RS75 .P52

Portman, Janet

Leasing Space for Your Small Business
Nolo Press
PLAZA HD1393.25 .S74 2000

Psychological Evaluations for the Courts, 2nd ed.

Guilford Press
KF8922 .P77 1997

Reports of the Proceedings of the Judicial Conference of the US...

AOC
JU 10.1/2

Response to the National Research Council's Assessment of Rand's Controlling Cocaine Study

Rand
HV5810 .C39 2000

Rhodes, Glenn

Patent Law Handbook, 2000-2001 ed.
West Group
KF3114 .P36

Rogers, Richard

Conducting Insanity Evaluations, 2nd ed.
Guilford Press
RC469 .R58 2000

Sampson, Michael H.

ADL in the Courts: Litigation Docket 1999
Anti-Defamation League
KF4755 .A35 2000

Schmudde, David A.

Federal Tax Liens, 4th Ed.
ALI-ABA
KF6316 .S36 2001

Schneier, Bruce

*Secrets & Lies: Digital Security in a
Networked World*
Wiley Computer Publishing
QA76.9.A25 S352 2000

Secured Transactions in California

Commercial Law Practice, 2nd ed.

CEB
KFA266 .A85

Stahl, Philip M.

*Complex Issues in Child Custody
Evaluations*
Sage Publications
KF547 .S72 1999

Stein, Joshua

A Practical Guide to Real Estate Practice
ALI-ABA
KF665 .S83 2001

Steingold, Fred

Leasing Space for Your Small Business
Nolo
Plaza HD1393.25 .S74 2000

Treatment of Offenders with Mental Disorders

Guilford Press
RC451.4.P68 Y74 1998

Trowbridge, Ronald L.

*With Sweet Majesty, Warren E. Burger
Trust for the Bicentennial of the US
Constitution*
KF8745.B87 T77 2000

Violence in Homes and Communities:

Prevention, Intervention and Treatment
Sage Publications
HV6626.2 .V57 1999

Walker, Warren E.

*Uncertainty: the Challenge for Policy
Analysis in the 21st Century*
Rand
H97 .W35 2001

Waters, Tony

Crime and Immigrant Youth
Sage Publications
HV9104 .W42 1999

Zuckerman, Howard A.

*Real Estate Development: Workbook and
Manual*
Prentice Hall
HD1390 .Z83 1991

□ Recent Articles on Criminal Law

Anker, Deborah. "Refugee Status and Violence Against Women in the 'Domestic' Sphere: The Non-State Actor Question." 15 *Georgetown Immigration Law Journal* 391 (2001).

Benda, Brent R., Robert F. Gorwyn and Nancy J. Toombs. "From Adolescent 'Serious Offender' to Adult Felon: A Predictive Study of Offense Progression." 32 *Journal of Offender Rehabilitation* 79 (2001).

Bordeleon, Jenna. "DUI Offenders Get Whiff of Reality: Judge's Sentences Require Defendants to Tour Coroner's Office." *Los Angeles Daily Journal* 1 (August 31, 2001).

Butterfield, Fox. "Number of People in State Prisons Decline Slightly: 3 Decades of Growth End." *New York Times* A1 (August 12, 2001).

Butterfield, Fox. "States Hold Fewer Inmates." *Arizona Republic* A1 (August 13, 2001).

Butterfield, Fox. "States Ease Laws on Time in Prison." *New York Times* 1 (September 2, 2001).

"Can My Daddy Hug Me?: Deciding Whether Visiting Dad in a Prison Facility Is in the Best Interest of the Child." 66 *Brooklyn Law Review* 933 (2000-2001).

Ciraco, Vito Nicholas. "Fighting Domestic Violence with Mandatory Arrest, Are We Winning?: An Analysis of New Jersey." 22 *Women's Rights Law Reporter* 169 (Spring 2001).

Cooper, Glenda. "Drug Cases, Sentences Rise Sharply Since 1984." *East Valley Tribune* A12 (August 20, 2001).

Ehrlich, Dorothy. "The Incarceration Syndrome: Using Prisons As an Answer to Problems Takes Toll on Poor People." 114 *Los Angeles Daily Journal* 6 (August 7, 2001).

Ferguson, Jason. "Apprendi v. New Jersey: Should Any Factual Determination Authorizing An Increase in a Criminal Defendant's Sentence Be Proven to a Jury Beyond a Reasonable Doubt." 52 *Mercer Law Review* 1531 (Summer 2001).

Firestone, David. "System for Defending Poor Needs Overhaul." 114 *Los Angeles Daily Journal* 4 (July 24,

2001).

Fried, Carrie S. and N. Dickon Reppucci. "Criminal Decision Making: The Development of Adolescent Judgment, Criminal Responsibility, and Culpability." 25 *Law & Human Behavior* 45 (2001).

Gates, Eve. "Tell It to the Judge: Brady, Baker, and the First Circuit Decision Allowing Police to Detain Suspects They Know to Be Innocent. (*Brady v. Dill*, 24 Federal Supplement 2d 129, D. Mass. 1998, rev'd 187F.3d 104, 1st Cir. 1999.)" 27 *New England Journal on Criminal & Civil Confinement* 225 (2001).

Gentry, Dianna J. "Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence." 13 *Yale Journal of Law & Feminism* 97 (2001).

Gerber, Judge Rudolph J. "On Dispensing Injustice." 43 *Arizona Law Review* 135 (2001).

Hanna, Cheryl. "Sex Is Not a Sport: Consent and Violence in Criminal Law." XLII *Boston College Law Review* 239 (March 2001).

Hinz, Tiffany and Kathy Pezdek. "The Effect of Exposure to Multiple Lineups on Face Identification Accuracy." 25 *Law & Human Behavior* 185 (2001).

Kim, Jessica Y. "In-Prison Day Care: A Correctional Alternative for Women." 7 *Cardozo Women's Law Journal* 221 (2001).

Lewin, Tamar. "3-Strikes Law Is Overrated in California, Study Finds: More Older Inmates Deemed Real Result." *New York Times* A10 (August 23, 2001).

Lucas, Beth. "Arpaio, Lawmakers Consider Tracking Stalkers Held in State Mental Health System." *Arizona Capital Times* 3 (August 31, 2001).

Niemi-Kiesilainen, Johanna. "The Deterrent Effect of Arrest in Domestic Violence: Differentiating Between Victim and Perpetrator Response." 12 *Hastings Women's Law Journal* 283 (2001).

"Rare Adultery Charges Raise Eyebrows in N.C." *Arizona Republic* A15 (August 18, 2001).

Rimer, Sara. "States Adjust Adult Prisons to Needs of Youth Inmates." *New York Times* A1 (July 25, 2001).

Saks, Alyssa. "Can Attempted Seizures Be Unreasonable?: Applying the Law of Attempt to the Fourth Amendment." 37

California Western Law Review 427 (2001).

Scotting, Troy A. "Hate Crimes and the Need for Stronger Federal Legislation." 34 *Akron Law Review* 853 (2001).

Spierling, Sarah E. "Lock Them Up and Throw Away the Key: How Washington's Violent Sexual Predator Law Will Shape the Future Balance Between Punishment and Prevention." 9 *ILSA Journal of International and Comparative Law* 879 (2001).

Stewart, Stephanie B. "*Apprendi v. New Jersey*: Protecting the Constitutional Rights of Criminals at Sentencing." 49 *University of Kansas Law Review* 1193 (June 2001).

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